

Award No. 82
Case No. 78

PUBLIC LAW BOARD NO. 4244

PARTIES) ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.
TO THE) AND
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: Carrier's decision to remove former old Middle Division Trackman D. P. Yazzie from service, effective June 30, 1989, was unjust.

Accordingly, Carrier should now be required to reinstate Claimant Yazzie to service with his seniority rights unimpaired and compensate him for all wages lost from June 30, 1989.

FINDINGS: This Public Law Board No. 4244 (the "Board") finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and the subject matter involved.

The record shows that in this dispute former old Middle Division Trackman Delbert P. Yazzie (the "Claimant") was absent from duty without proper authority on June 19, 20, and 21, 1989. On June 22, 1989, he signed a discipline waiver wherein he waived his right to an investigation, admitted that he was absent without authority on the dates involved, and accepted a disciplinary assessment of 30 demerits. The waiver further stated that the Claimant acknowledged that an accumulation of 60 demerits subjected him to dismissal from service and that the assessment of 30 demerits resulted in his personal record having 65 demerits.


In a letter dated June 30, 1989, the Carrier advised the Claimant that his seniority and employment were terminated effective that day due to his accumulation of excessive demerits.

The record also shows that the Claimant was dismissed previously on March 31, 1988 for excessive demerits. On April 11, 1988, the Carrier reinstated the Claimant on a leniency basis with 55 demerits outstanding on his record. On June 19, 1989, he had a total of 35 demerits on his record.

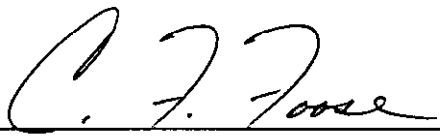
In reviewing this matter the evidence of record shows that after the Claimant's removal from service he enrolled in the Carrier's Employee Assistance Program and has been a cooperative participant. Accordingly, it is the Board's decision to give the Claimant another opportunity to demonstrate that he can be a responsible employee. Thus, the Claimant shall be reinstated to service with his seniority rights unimpaired but without pay for time lost. Further, as a condition of reinstatement and prior to his return to service, the Claimant must meet with a Carrier Employee Assistance Counselor and participate in any program established by the Counselor.

Last, the Board finds that the Carrier complied with all the terms of the collective bargaining agreement in its handling of this matter.

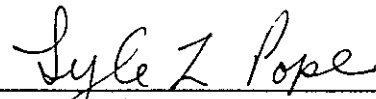
AWARD: Claim sustained as set forth above.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: September 5, 1991
Schaumburg, Illinois